

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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OVEREND TECHNOLOGIES, LLC,

Plaintiff,

v.

Case No. 05-C-800

INVISTA S.Á.R.L., *et al.*,

Defendants.

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**ORDER**

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Plaintiff OverEnd Technologies, LLC, sued Defendant Invista S.Á.R.L. seeking a declaratory judgment of non-infringement and invalidity of U.S. Patent No. 6,676,054 (“the ‘054 patent”). OverEnd also alleged, in the third count of its original complaint, that Invista violated § 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, by lessening competition in the relevant market. Invista moved to dismiss the third count under Fed. R. Civ. P. 12(b)(6), because it fails to allege the minimum requisites of a § 2 claim. OverEnd has not responded to the motion. However, OverEnd has filed an amended complaint that attempts to cure the pleading deficiencies identified by Invista in its motion.<sup>1</sup> Fed. R. Civ. P. 15(a) provides that “[a] party may amend the party’s pleading once as a matter of course at any time before a responsive pleading is served . . . .” This rule permits a party to amend its pleadings in response to a motion to dismiss under Fed. R. Civ. P. 12(b)(6).

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<sup>1</sup>OverEnd’s amended complaint also adds two defendants, and alleges that the defendants conspired to restrain trade in the relevant market in violation of § 1 of the Sherman Antitrust Act, 15 U.S.C. § 1.

*Textor v. Bd. of Regents of N. Ill. Univ.*, 711 F.2d 1387, 1391 n. 1 (7th Cir. 1983). Because OverEnd has amended its complaint in an effort to cure the deficiencies in its Sherman Act claim, Invista's motion to dismiss is **DENIED** as moot.

**SO ORDERED.**

Dated this 21st day of November, 2005.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge